

4 CARLOS AGUTAR

vs.

C.A. NO.: 04-12011-MLW

7 LIMA & CURA FISHING CORPORATION

10 VIDEOTAPED DEPOSITION OF DR. JENNIFER LEE,
in the above-entitled cause, taken on behalf of the
11 Plaintiff, at 2 Dudley Street, Providence, Rhode
Island, 02903, before Jane F. Cormier, CSR, a Notary
12 Public in and for the State of Rhode Island, on
December 7th, 2005, convening at 4:00 p.m.

13

14

15

APPEARANCES.

17 For the Plaintiff:

LATTI & ANDERSON

18 30-31 Union Wharf

Boston, Massachusetts 02109

19 BY: DAVID ANDERSON, ESQ.

20 For the Defendant:

REGAN & KIELY, LLP

21 85 Devonshire Street

Boston, Massachusetts 02109

22 BY: JOSEPH A. REGAN, ESQ.

23

24

<p>1 you say that, do I still answer?</p> <p>2 MR. REGAN: Yes.</p> <p>3 MR. MR. ANDERSON: He's just sort of like,</p> <p>4 later on we could argue about whether that was an</p> <p>5 appropriate question. So, he is noting on the</p> <p>6 record that, gee, I don't think that's a good</p> <p>7 question. But you can go ahead.</p> <p>8 A Could you restate it?</p> <p>9 Q Yeah. We were talking about the rationale for</p> <p>10 performing the Ray amputation, and you described</p> <p>11 it. And I think my question was that at that</p> <p>12 time, or prior to the Ray amputation he was</p> <p>13 experiencing a set of symptoms which were made</p> <p>14 worse when he actually actively used the hand; is</p> <p>15 that correct?</p> <p>16 MR. REGAN: <u>Objection.</u></p> <p>17 A Let me see if I actually wrote that somewhere. By</p> <p>18 using the hand, do you mean in his job, or just in</p> <p>19 general?</p> <p>20 Q Just using it in everyday life. When he used it,</p> <p>21 it was painful; was it not?</p> <p>22 MR. REGAN: <u>Objection.</u></p> <p>23 A Yes.</p> <p>24 Q And in addition, I believe you mentioned that by</p>	<p>Page 14</p> <p>1 He had some increase in strength and range of</p> <p>2 motion per his history. He still complained of</p> <p>3 some swelling when he used his hand. From</p> <p>4 physical exam his incisions were well-healed. He</p> <p>5 did not have any pain when I touched his incision</p> <p>6 or over the hand area.</p> <p>7 The patient's history says that he</p> <p>8 complained that it was swollen. I didn't note</p> <p>9 that on exam. And overall in terms of what you</p> <p>10 would expect in terms of range of motion and grip</p> <p>11 and strength, as much as you can just grossly</p> <p>12 examine it, it seemed to be improving.</p> <p>13 Q Okay. And then the final treatment with the hand</p> <p>14 clinic was in September of this year?</p> <p>15 A Yes.</p> <p>16 Q And similar type of symptoms, somewhat improved?</p> <p>17 A So, he was seen by Dr. Friedman, who's another</p> <p>18 resident. He continued to complain of increase in</p> <p>19 swelling when he used the hand, but it improves</p> <p>20 with elevation.</p> <p>21 MR. REGAN: Objection. <u>Move to strike.</u></p> <p>22 Q Is that consistent with --</p> <p>23 A That's his history, so I don't know. And we don't</p> <p>24 see them long enough to be able to assess that.</p>
<p>1 removing the finger, not only would one not have</p> <p>2 that pain, but also that he would get -- the hand</p> <p>3 would function better with the Ray amputation; is</p> <p>4 that correct?</p> <p>5 MR. REGAN: <u>Objection.</u></p> <p>6 A It may function better. But yes, the finger would</p> <p>7 not be there, and he would not have that specific</p> <p>8 set of problems, because the finger would be gone.</p> <p>9 Q Okay. And was the Ray amputation performed?</p> <p>10 A Was it performed? Yes.</p> <p>11 Q And were you involved in performing that Ray</p> <p>12 amputation?</p> <p>13 A Yes.</p> <p>14 Q And did you also follow up with Mr. Aguiar</p> <p>15 following the Ray amputation?</p> <p>16 A I did. The surgery itself was on November 22nd,</p> <p>17 2004, and I had seen him several times after that.</p> <p>18 The last time I had seen him was in May of 2005.</p> <p>19 Q And that was his second to last visit?</p> <p>20 A As far as I know from the chart.</p> <p>21 Q And what symptoms was he experiencing when you</p> <p>22 last saw Mr. Aguiar?</p> <p>23 A When I last him -- I last saw him May 27th, 2005,</p> <p>24 and he was still in the process of having therapy.</p>	<p>Page 15</p> <p>1 The person who wrote most of the note, I don't</p> <p>2 know who that is, but all I can say is that</p> <p>3 Dr. Friedman sort of corroborated. But it notes</p> <p>4 on his exam that he has full range of motion and</p> <p>5 strength. But that's not something you can</p> <p>6 measure in this kind of setting. And he seemed to</p> <p>7 have some amount of swelling, but I don't know who</p> <p>8 assessed that.</p> <p>9 Q Meaning the note indicates swelling, but it's not</p> <p>10 clear who?</p> <p>11 A Because initially it was talking about what he</p> <p>12 complained of. That's different than the physical</p> <p>13 exam itself.</p> <p>14 Q Okay.</p> <p>15 A So, I had seen him in May, and I know that my</p> <p>16 physical exam might be different than whoever --</p> <p>17 Q Okay. So, when he was last seen, he was</p> <p>18 complaining of some swelling in the hand, and that</p> <p>19 appears to be corroborated by the physical exam in</p> <p>20 which it was noted mild edema in the hand.</p> <p>21 A I guess so from the note. I can only comment on</p> <p>22 the note.</p> <p>23 Q I would like you to assume that at present and</p> <p>24 pretty much for all fall, that Mr. Aguiar has</p>

5 (Pages 14 to 17)

<p style="text-align: right;">Page 18</p> <p>1 experienced some mild swelling when he uses the 2 hand. I would also like you to assume that as 3 it's gotten colder this fall, he's had some mild 4 cold intolerance, not the degree to which he had 5 prior to the Ray amputation, but cold intolerance, 6 and that he gets occasional shooting pain when he 7 uses it. And that also his strength, the total 8 hand strength of the right is somewhat less than 9 his left. And I'd like you to assume that those 10 are the symptoms that Mr. Aguiar has been 11 experiencing this fall. Do you have an opinion as 12 to whether it's more likely than not that he will 13 experience these symptoms indefinitely into the 14 future to some degree?</p> <p>15 MR. REGAN: <u>Objection.</u></p> <p>16 A So, he is about a year out from his surgery, and 17 has those symptoms.</p> <p>18 Q Um-hum.</p> <p>19 A The likelihood is that he probably will have those 20 symptoms.</p> <p>21 Q Indefinitely into the future?</p> <p>22 A Most likely.</p> <p>23 MR. REGAN: <u>Objection.</u></p> <p>24 Q You're not familiar with work as a commercial</p>	<p style="text-align: right;">Page 20</p> <p>1 try to find some alternative type of work?</p> <p>2 MR. REGAN: <u>Objection.</u></p> <p>3 A Just from my knowledge from literature on Ray 4 amputation, the loss of grip strength averages 5 about thirty percent, which is fairly significant. 6 I don't know what his prior maximum ability to 7 carry things was, but overall, not exactly knowing 8 how harsh it is, from what it sounds like, he 9 probably should find some other job.</p> <p>10 Q And how would you describe alternative type of 11 work in terms of mild, moderately strenuous; what 12 do you think?</p> <p>13 MR. REGAN: <u>Objection.</u></p> <p>14 Q If you can -- I mean, I --</p> <p>15 A I mean, I -- if he wanted to be lifting heavy 16 things, to go back into construction, he would 17 probably have to be careful, because he wouldn't 18 have the strength that he might have had 19 previously in that hand. And it is his dominant 20 hand. I don't know how much dexterity he's 21 developed. So, it's hard to say, but I would 22 recommend he use caution, and not get a job where 23 he would have to do a lot of heavy work.</p> <p>24 MR. ANDERSON: I have no further</p>
<p style="text-align: right;">Page 19</p> <p>1 fisherman, are you?</p> <p>2 A Only what I've seen on television.</p> <p>3 Q Okay. I would like for you just to assume that 4 the type of work that Mr. Aguiar was doing 5 involved working outdoors on a offshore commercial 6 fishing vessel; that these vessels go on trips 7 that range from six to ten days; they fish at all 8 times of the year; and that when they're fishing 9 they're working in excess of twelve hours a day, 10 on deck, sometimes in gloves, but many times not 11 with gloves, working with nets, working with 12 equipment both in the summer, and also in the 13 winter. And I also would like for you to assume 14 that it involves quite a bit of heavy work with 15 both hands, and also involves hauling stuff like 16 ninety pound baskets of fish and things of that 17 nature. Do you have an opinion, based upon that 18 job description, whether Mr. Aguiar ought to try 19 to find some other type of work?</p> <p>20 MR. REGAN: <u>Objection.</u></p> <p>21 A With the symptoms that you said?</p> <p>22 Q And also the symptoms that I described in the 23 second -- the question preceding that one. Do you 24 have an opinion as to whether Mr. Aguiar ought to</p>	<p style="text-align: right;">Page 21</p> <p>1 questions.</p> <p>2 EXAMINATION BY MR. REGAN</p> <p>3 Q Dr. Lee, when were you first licensed to practice 4 medicine?</p> <p>5 A I have a temporary license through the residency.</p> <p>6 Q What do you mean by a temporary license?</p> <p>7 A I am not fully licensed for the state of Rhode 8 Island. I get a license renewed every year to 9 practice as a resident.</p> <p>10 Q Are you licensed to practice in any other state?</p> <p>11 A No.</p> <p>12 Q And with this temporary license are there 13 restrictions on what you can do in terms of 14 treatment of patients that come to the Rhode 15 Island Hospital?</p> <p>16 A I have to have supervision. To a certain degree I 17 would be able to do tasks on my own, like suture 18 removal and things like that, where you don't need 19 an attending always present. But all plans with 20 patients, and all surgeries are supervised by an 21 attending.</p> <p>22 Q And when will you be eligible to get a permanent 23 or a full fledged license or whatever you would 24 call it?</p>

<p>ge 20 y 1g f lat e 1</p> <p>1 A I could apply for a full license now. And it's 2 not dependent on whether I finish my residency or 3 not; it's essentially if I finish all of my 4 required board tests, then I can apply. And I've 5 been able to do that since I finished my last -- 6 it's called -- there's three steps that you have 7 to take, three tests. So, I've already done that. 8 Q So, what's left for you to apply to get fully 9 licensed? Do you have take another test? 10 A No. You just have to apply. 11 Q Is there any part of becoming a permanent or full 12 fledged doctor -- 13 A I'm already a doctor, medical doctor. So, that's 14 separate. That requires graduation from medical 15 school. 16 Q Well, you used the term temporary license. What 17 am I comparing it to? What does Dr. Bowen have or 18 Dr. Friedman have that you don't have? 19 A Dr. Friedman is also a resident, so he also has a 20 temporary license. 21 Q What does Dr. Bowen have? 22 A He decided that he wanted to practice in Rhode 23 Island, and decided to apply for a full license 24 here, so that, he doesn't need to -- I don't</p>	<p>Page 22</p> <p>1 you were not the surgeon. 2 A I was not the primary surgeon, no. I was an 3 assistant. 4 Q You weren't involved in the cutting. 5 A I was involved in the cutting. 6 Q And in what respect? 7 A I was involved in skin -- some of the dissection, 8 the bone cutting. That's part of my training. 9 So, it's done under the supervision of Dr. Bowen, 10 so that he can assess whether it's being done 11 correctly. 12 Q And I take it you're not board certified in hand 13 surgery or hand specialty? 14 A No. 15 Q Is that correct? 16 A No. 17 Q And board certification is a status that a fully 18 licensed doctor can apply for and take tests for 19 in order to become board certified? 20 A Yes. And it applies to certain specialties, 21 because if there is some specialty where there is 22 no organized exam, then there's no board 23 certification. 24 Q Is there a board certification in plastic surgery?</p>
<p>1 actually know if he has to renew it. It doesn't 2 have to do with what kind of doctor you are, it 3 doesn't have to do with your specialty; it's just 4 whether you've completed medical school, and 5 you've completed the tests that show you have a 6 certain competency after medical school. 7 Q When did you complete medical school? 8 A 2000. 9 Q And when did you first start working here at the 10 Rhode Island Hospital? 11 A 2000. 12 Q And you described yourself as a resident. What is 13 a resident, or what is a residency? 14 A A residency is a training program where you learn 15 to be a specific type of doctor. There are 16 certain M.D.s and D.O.s who do not choose to do 17 any training. They are still doctors. When you 18 decide to do a certain training, you are just 19 learning how to do that specialty. 20 So, there are some people who do the 21 training, and they don't even practice, but that's 22 just their decision. 23 Q I take it from what you've told us so far that 24 while you were present at Mr. Aguiar's amputation</p>	<p>Page 23</p> <p>Page 25</p> <p>1 A There is. As well as separately in hand surgery. 2 Q And I take it you're not board certified in 3 plastic surgery. 4 A No. 5 Q And you answered my next question, which is there 6 is a board certification in hand surgery. 7 A Right. 8 Q And you're not board certified as far as hand 9 surgery is concerned. 10 A No. 11 Q And in your work here at the Rhode Island 12 Hospital, do you specialize in treatment of the 13 hand, or do you treat all plastic surgery 14 problems? 15 A All plastic surgery. 16 Q And when you were testifying here today in 17 response to Mr. Anderson's questions, were you 18 testifying from a memory you have of actually 19 seeing Mr. Aguiar, or is it only from reliance on 20 your notes that you're able to answer the 21 questions? 22 MR. ANDERSON: I'm going to object, 23 because it could be a combination. 24 MR. REGAN: Let me withdraw the</p>